

SECURITY FEED & SEED CO.

APRIL 22, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2338]

The Committee on the Judiciary, to whom was referred the bill (H. R. 2338) for the relief of Security Feed & Seed Co., having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert:

That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of \$1,000 to the Security Feed and Seed Company, of Johnson City, Tennessee, in full settlement of all claims against the United States. Such sum represents property damages sustained as the result of an accident involving a United States Army vehicle, which occurred on United States Highway Numbered 11-E, about nine miles from Greenville, Tennessee, on August 9, 1951: *Provided*, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

Amend title so as to read:

A bill for the relief of the Security Feed and Seed Company.

STATEMENT OF FACTS

The purpose of the proposed legislation is to pay the sum of \$1,000 to the Security Feed & Seed Co. of Johnson City, Tenn., in full settlement of all claims against the United States. Such sum represents property damages sustained as the result of an accident involving a United States Army vehicle, which occurred on United States High-

way No. 11-E, about 9 miles from Greeneville, Tenn., on August 9, 1951.

The facts are fully stated in the Army report and it objects to the enactment of the bill for the reason that the company did not file suit under the Federal Tort Claims Act. However, the company had filed a claim for the actual damage of \$1,426.75 and under the act the Army could not pay in excess of \$1,000. Therefore, negotiations continued until the statute of limitation had run, and when the company agreed to accept the \$1,000 the Army could not make settlement.

This bill was introduced to permit the company to file suit under the Federal Tort Claims Act by waiving the statute of limitation; however, after a hearing and full discussion the committee came to the conclusion that in view of the fact that the Army recognized the liability and the amount of \$1,000 could have been paid had the company accepted this amount at the time of the accident or within 1 year thereafter; that it would be very costly and unnecessary to have the case referred to the court when the facts are not in controversy.

Therefore, the bill has been amended to appropriate the sum of \$1,000 to the company and recommend favorable consideration of the bill as amended. The author of the bill advises the committee that no attorney is involved.

DEPARTMENT OF THE ARMY,
Washington, D. C., August 30, 1954.

HON. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter enclosing a copy of H. R. 9444, 83d Congress, a bill conferring jurisdiction upon the United States District Court for the Eastern District of Tennessee to hear, determine, and render judgment upon any claim arising out of personal property damage sustained by the Security Feed & Seed Co., of Johnson City, Tenn., and requesting a report on the merits of the bill.

This bill provides as follows:

"That the jurisdiction conferred upon the United States District Court for the Eastern District of Tennessee by subsection (b) of section 1346, title 28, United States Code, is hereby extended to a civil action, which may be commenced not later than one year after the enactment of this Act, asserting any claim or claims of the Security Feed and Seed Company, Johnson City, Tennessee, against the United States for money damages arising out of personal property damages sustained by them in a collision between their truck and a United States Army truck, which occurred on United States Highway 11-E, about nine miles from Greeneville, Tennessee, on August 9, 1951. Except as otherwise provided in this Act, all provisions of law applicable in and to such subsection, and applicable to judgments therein and appeals therefrom, are hereby made equally applicable in respect of the civil action authorized by this Act: *Provided, however,* That nothing in this Act does or shall constitute an admission of liability on the part of the Government of the United States of America."

Records of the Department of the Army show that on August 9, 1951, at approximately 9:45 a. m., a convoy of Army vehicles transporting Government equipment to Fort Bragg, N. C., from Camp

Atterbury, Ind., was proceeding east on Highway 11-E, near Greeneville, Tenn. One of the trucks in the convoy veered across the center of the highway, out of control because of mechanical difficulty, and collided with a truck coming from the opposite direction, which truck was owned by the Security Feed & Seed Co., of Johnson City, Tenn., a subsidiary of Security Mills, Inc., of Knoxville, Tenn. The civilian vehicle, because of damage to its steering apparatus and transmission, left the road, out of control, and struck a telephone pole, coming to rest in a ditch at the roadside. The driver and sole occupant of the vehicle, Ernest W. Whited, suffered lacerations of the face and a fractured left knee.

On August 24, 1951, Security Mills, Inc., hereinafter referred to as Security Mills, sent a letter to the commanding general, 28th Infantry Division, Camp Atterbury, Ind., in which was stated the facts of the aforementioned accident and a statement that it had filed no claim for damages as it was neither acquainted with the procedure nor had the necessary forms. Pursuant to this request the office of the judge advocate of the 28th Infantry Division sent the necessary forms to Security Mills on September 4, 1951, with accompanying instructions concerning their completion. Security Mills filed a claim in the amount of \$1,426.75 on January 26, 1952.

The Claims Division, Office of the Judge Advocate General, declined to take jurisdiction of the claim of Security Mills and, on October 7, 1952, notified the claimant of this action in a letter which reads, in pertinent part, as follows:

"Reference is made to your claim * * * in the amount of \$1,426.75 for damage to your truck * * *.

"The Federal Tort Claims Act, as codified and amended * * * provides that the United States district court shall have exclusive jurisdiction of civil actions on claims exceeding \$1,000 * * *.

"Accordingly, the Department of the Army is without jurisdiction to entertain or consider the claim as presented."

The claims judge advocate at Headquarters, Third Army, received a letter from Security Mills on March 16, 1954, which letter reads, in pertinent part, as follows:

"Filing of the amended return [claim] for \$1,000 as mentioned in the exchange of correspondence of October 1952 has been deferred pending the outcome of a suit by the driver of our vehicle against this company and its insurer (wherein a judgment for injuries was awarded the driver), and a subsequent claim filed by this company and its insurer against the United States to recover for damages awarded our driver.

"Inasmuch as all claims by the driver of our vehicle have been ascertained and settled, we now submit our amended claim for damages sustained to our vehicle for \$1,000, which will attach to and become part of our claim of January 26, 1952. Note that in the amended return [claim] certain inaccuracies are corrected. Security Feed & Seed Company of Johnson City, Inc., was the owner and operator of the damaged vehicle. This organization is a wholly owned subsidiary of Security Mills, Inc., in whose name the original claim was filed."

This letter and the "amended claim" were forwarded to the Claims Division, Office of The Judge Advocate General on March 19, 1954. The claim was disapproved on April 8, 1954, for the reason that said claim was barred by the statute of limitations of the Federal Tort

Claims Act. Security Feed & Seed Co., hereinafter referred to as Security Feeds, then appealed this decision to the Secretary of the Army by letter dated April 23, 1954. This letter reads, in pertinent part, as follows:

"We feel our delay in filing an acceptable claim was unavoidable (as a matter of fact our original application was filed on January 26, 1952) as there was no determination of the amount of our damage until a settlement was made on the personal-injury claim. Hence we appeal to the Secretary of the Army for consideration and ultimate payment of this claim for \$1,000."

On May 11, 1954, after a careful consideration of the entire record, the Under Secretary of the Army, acting for the Secretary of the Army, sustained the prior action of disapproval and denied the appeal therefrom on the same ground as mentioned above.

The Federal Tort Claims Act (60 Stat. 845; 28 U. S. C. 931), as revised and codified by the act of June 25, 1948 (62 Stat. 971; 28 U. S. C. 2401 (b)), and as amended by the act of April 25, 1949 (63 Stat. 62), provides that—

"A tort claim against the United States shall be forever barred unless action is begun within two years after such claim accrues or within one year after the date of enactment of this amendatory sentence [April 25, 1949], whichever is later, or unless, if it is a claim not exceeding \$1,000, it is presented in writing to the appropriate Federal agency within two years after such claim accrues or within one year after the date of enactment of this amendatory sentence [April 25, 1949], whichever is later."

The claim of Security Mills came directly within the purview of the above-quoted provision of the Federal Tort Claims Act, and Security Mills had until August 9, 1953, 2 years after such claim accrued, within which to elect its remedy and either bring an action in the district court for the full amount of damages sustained by reason of the accident, or file for administrative determination in an amount of \$1,000 or less.

The records of the Department show that Security Mills was fully advised of its remedies on October 7, 1952. Instead of applying for administrative action for \$1,000 or commencing suit for the full amount of damages at that time, it deferred action until determination of the suit filed by its driver for personal injuries. It should be noted that Security Feeds and Liberty Mutual Insurance Co. intervened in the aforementioned action on March 13, 1953, because, as is stated in their petition of intervention, "the representation of their interest by the existing plaintiff may be inadequate and further that they would be bound by a judgment in the action." The question naturally arises why Security Feeds did not, under the lenient provisions of the Federal Rules of Civil Procedure, interpose the claim for damage to its truck in this action. It was then a party plaintiff in the action and this claim could have been adjudicated. However, for reasons known only to Security Feeds, this was not done. When it finally decided to take action the statute of limitations had run on its claim. The purported amended claim filed on March 16, 1954, could not relate back to the claim filed on January 26, 1952, because the statute of limitations had already become a bar.

Security Feeds, in its letter of appeal to the Secretary of the Army, on April 23, 1954, endeavoring to excuse the unavoidable delay in

filing a claim within the jurisdiction of the Department, stated that "there was no determination of the amount of our damage until a settlement was made on the personal injury claim." However, the record discloses that the amount of damages to its vehicle was fully ascertained on January 26, 1952, when it filed a claim for \$1,426.27, accompanied by substantiating evidence.

Subject claim comes within the decision of *Marino v. United States* (82 F. Supp. 190, 192 (S. D. N. Y. 1948)), wherein claimants filed a joint claim for more than \$1,000 with the Coast Guard and amended their claim to bring them within the \$1,000 statutory limit for administrative action more than 1 year (now 2 years) (28 U. S. C. 2401 (b), supra) after the date of the accident. The court opinion reads, in pertinent part, as follows:

"While plaintiffs did present their claim to the Coast Guard within 1 year, the claims * * * were each for more than \$1,000 and suit was not commenced thereon within 1 year [now 2 years, supra] after the claim accrued.

"The fact that in January 1948 [more than 1 year after the claim accrued] the Coast Guard wrote that consideration would be given to their claims if they were reduced, and that thereafter they were reduced, cannot affect the situation here. The reduction was futile, inasmuch as the claims had already been barred by the statute. * * * The letter from the Federal agency cannot be construed as a waiver, for the Coast Guard has no authority to waive the limitations created by the statute * * *"

How much less favorable to the claimant are the facts in the instant case? The facts show that at the time jurisdiction of the claim was denied, because of the statutory limitation on amount of the claim, the statute of limitations had not yet run. Security Mills could have then reduced its claim to \$1,000 or commenced suit in the district court. No legally sufficient or equitable reason has been presented which would excuse this failure to have exercised its administrative or judicial remedy prior to August 9, 1953, after which date the claim was forever barred by the statute of limitations. There is no justifiable basis for the disregard of the plain terms of the Federal Tort Claims Act, or for the granting of rights to this claimant which are denied to other claimants in similar circumstances.

This bill, if enacted, would be discriminatory in that it would grant special rights to this claimant which are denied to numerous other claimants whose claims have been barred under similar circumstances. Therefore, the Department of the Army recommends that this bill be not favorably considered by the Congress.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

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